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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,398	03/09/2001	Steve Toren Scott	P00509-US-1 (04690.0007)	7547
43218 7590 11/25/2009 TAFT STETTINIUS & HOLLISTER LLP ONE INDIANA SQUARE, SUITE 3500 INDIANAPOLIS, IN 46204			EXAMINER PARDO, THUY N	
			ART UNIT 2627	PAPER NUMBER
			NOTIFICATION DATE 11/25/2009	DELIVERY MODE ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEVE TOREN SCOTT, WILLIAM A. KIVETT,  
ROBERT A. BURDICK, DWIGHT E. FUNK, KEVIN JACKSON,  
DAVID MCCAULEY, REBECCA RUSELINK, JASON BROWN, and  
KYLE JONES

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Appeal 2009-001203  
Application 09/802,398  
Technology Center 2600

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Decided: November 23, 2009

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Before JOSEPH L. DIXON, JOHN A. JEFFERY, and  
STEPHEN C. SIU, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-9, 11, 13-18, and 24-29. Claims 10, 12, and 19-23 have previously been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

## I. STATEMENT OF THE CASE

### *The Invention*

The Appellants invented a method and system for supply chain product and process development collaboration between the customer and the supplier during all phases of product and process design, development, and manufacture. (Abstract).

### *The Illustrative Claim*

1. A system for management of at least one project, each of the at least one projects comprising a part, a supplier that is to supply the part, a customer that is to be supplied the part, at least one methodology applicable to the project, such methodology being indicative of at least one requirement, and at least one control associated with processing of the project, the system comprising: means for processing project data to compare data entered by a user to the at least one methodology to ensure that correct process(es) is (are) followed to establish a manufacturing capability to reliably produce parts of a given quality to a given set of specifications; and means for storing and retrieving the project data, the project data storing and retrieving means operably connected to the processing means, and the project data comprising, for each of the at least one projects, a project identifier to identify the project, a project part identifier to identify the part of the project, a project supplier identifier to identify the supplier of the project, a project customer identifier to identify the customer of the project, data representative of the at least one methodology of the project, and data representative of the at least one control of the project.

*The Reference*

Huang                      US 5,953,707                      Sept. 14, 1999

*The Rejection*

Claims 1-9, 11, 13-18, and 24-29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Huang.

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Huang discloses “to compare data entered by a user to the at least one methodology to ensure that correct process(es) is (are) followed to establish a manufacturing capability to reliably produce parts of a given quality to a given set of specifications,” as recited in the independent claim 1?

III. PRINCIPLES OF LAW

*Prima Facie Case of Unpatentability*

The allocation of burden requires that the United States Patent and Trademark Office (USPTO) produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). Appellant has the opportunity on appeal to the Board of Patent Appeals and Interferences to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

### *Anticipation*

“[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim . . . .” *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)). “[A]bsence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986) (citing *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1573-74 (Fed. Cir. 1984)), *overruled on other grounds by Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.*, 383 F.3d 1337 (Fed. Cir. 2004).

Inherency is not established by probabilities or possibilities. *See MEHL/Biophile Int’l Corp. v. Milgraum*, 192 F. 3d 1362, 1365 (Fed. Cir. 1999) (citing *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981) (internal citations omitted)). That a certain thing may result from a given set of circumstances is not sufficient to establish inherency. *Id.*

## IV. FINDINGS OF FACT

The following findings of fact (FFs) are supported by a preponderance of the evidence.

1. Huang discloses a decision support system for the management of a supply chain (Huang, col. 1, ll. 53-60). The system allows manufactures or vendors to prepare a feasible replenishment plan for a customer by integrating and reconciling the information of production, sales, and inventory data of a product (*id.* col. 2, ll. 15-23; Fig. 2).

2. Huang further discloses a process of Supply Management 83 that determines the production (supply) plan to meet the production (supply) requirements generated by the PSI planning process (Huang, col. 13, ll. 45-64; Fig. 8).

3. Huang also discloses Requirements Management Process to estimate future repair requirements for failures related to failed parts of equipment and repair time needed (Huang, col. 16, ll. 1-64; Fig. 9).

4. Huang further discloses that “Forecast Performance Evaluation – Using Demand Orientation Data 146, Demand History Data 136 and Promotion data 142, the SFP 132 and MDA Module 134 can evaluate the quality of enterprise’s forecasts and the customer projections.” (Huang, col. 19, ll. 3-7).

## V. ANALYSIS

### *35 U.S.C. § 102(e) rejection*

With respect to claim 1, the Appellants contend that “Huang merely focuses on supply chain management pertaining to *quantity* (supply volume) and not *quality* as taught by the present application” (App. Br. 19), and “none of the references within *Huang* made by the Examiner demonstrate any system relating to *quality*.” (Reply Br. 8). “In short, *Huang* deals with a system that ensures *quantity*, *i.e.* matches production with sales. . . . Appellant’s invention ensures standards are met and is not concerned with matching production quantities with sales.” (App. Br. 19-20).

The Examiner maintains that the claim language is anticipated by Huang:

Examiner believes that Huang does not only teach supply chain management pertaining to quantity but also to quality as well. Huang teaches that the data in each data space (i.e. demand, supply and inventory data) can be at any resolution (in terms of level of aggregation) along the three dimensions and can be expressed as a quantity or value [col. 7, lines 47-57]. Huang also ensures quality standards are met by determining the production (supply) plan to meet the production (supply) requirements generated by the PSI Planning process [see col. 13, lines 45-64; col. 16, lines 1-67]. Huang also analyzes the impact of promotions on sales. The results of such an analysis are then used to help adjust sales forecasts to account for promotions. Forecast performance evaluation can evaluate the quality of enterprise's forecasts and the customer projection [col. 19, lines 1-7].

(Ans. 8).

We disagree with the Examiner's reading of the Huang reference. We find Huang teaches the decision support system for managing supply volume based on quantity data, such as sales and inventory (FF 1). We also find Huang teaches a process for making a production plan to meet the production requirement (FF 2). We further find Huang teaches a process for estimating the future repair requirement based on the failures related to the failed part and repairing time needed (FF 3), which is not related to controlling quality of the product in the production process. Even though Huang mentions "quality," the evaluation of the quality is related to the forecast and projection, not the quality of the part being produced (FF 4). The Examiner has not shown, and we do not find that Huang expressly or inherently teaches the argued limitations. We, therefore, find the Examiner's arguments unpersuasive of the required showing for anticipation.

Because we agree with at least one of the Appellants' contentions, we cannot sustain the anticipation rejection of claim 1.

Independent claims 11, 13, and 24 contain similar argued limitations as those set forth in independent claim 1. Thus, we can not sustain the anticipation rejection of claims 11, 13, and 24.

The anticipation rejection of dependent claims 2-9, 14-18, and 25-29 contains the same deficiencies.

Therefore, we reverse the anticipation rejection of claims 1-9, 11, 13-18, and 24-29.

## VI. CONCLUSION

We conclude that the Appellants have shown that the Examiner erred in finding that Huang discloses "to compare data entered by a user to the at least one methodology to ensure that correct process(es) is (are) followed to establish a manufacturing capability to reliably produce parts of a given quality to a given set of specifications," as recited in the independent claims 1, and as set forth in respective independent claims 11, 13, and 24.

## VII. DECISION

We reverse the Examiner's rejections of claims 1-9, 11, 13-18, and 24-29.

REVERSED



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Application 09/802,398

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